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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,822	10/30/2003	Kevin Maher	1666.1000	1293
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HANES & SCHUTZ, LLC 102 SOUTH TEJON ST. SUITE 800 COLORADO SPRINGS, CO 80903			EXAMINER THANH, QUANG D	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 09/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/696,822

Applicant(s)

MAHER, KEVIN

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above claim(s) 18, 19, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 6/25/07. As directed by the amendment: claims 18-20 have been amended, claims 21-23 have been added. Thus, claims 18-23 are presently pending in this application. However, claims 18-19 and newly submitted claims 22-23 are directed to a non-elected species of figures 4-6. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-19 and 22-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Thus, claims 20-21 are presently under consideration.

### ***Response to Amendment***

2. The amendment filed 6/25/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "for **continuous rotation through 360 degrees**", and "for imparting **continuous 360 degrees rotation** to the platform" (claim 20). Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter as discussed above, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Heisler (3,152,802). Heisler discloses an apparatus having a rotatable platform (col. 1, lines 50-51) thus capable of producing therapeutic vestibular stimulation in a patient, comprising: a platform 30 for supporting a human body (fig. 1), frame means (the A frame, fig. 1) rotatably supporting the platform 30 for rotation (col. 6, lines 44-46) and having at least one rotatable shaft 51 attached to the platform (fig. 2) and defining an axis of rotation for the platform, and planar actuator means 17 (fig. 2-3) having a center, the plane of the actuator means is perpendicular to the longitudinal axis of the at least one shaft and the center of the actuator means is coaxial with the longitudinal axis of the at least one shaft 51 (fig. 2-3), wherein the actuator means is operatively connected to the shaft for imparting rotation to the platform means (fig. 1 and 8, col. 4, lines 25-30).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heisler (3,152,802) view of Schaeffer (6,821,288). Heisler discloses an apparatus having a rotatable platform (col. 1, lines 50-51) thus capable of producing therapeutic vestibular stimulation in a patient, comprising: a platform 30 for supporting a human body (fig. 1), frame means (the A frame, fig. 1) rotatably supporting the platform 30 for continuously rotation through 360 degrees (col. 6, lines 44-46) and having at least one rotatable shaft 51 (fig. 2) and defining an axis of rotation, and actuator means includes at least one circular planar disk 17 (fig. 2-3) having a center, the plane of the disk is perpendicular to the longitudinal axis of the at least one shaft and the center of the disk is coaxial with the longitudinal axis of the at least one shaft 51 (fig. 2-3), wherein the disk is operatively connected to the shaft for imparting continuous 360 degrees rotation to the platform means (fig.1 and 8, col. 4, lines 25-30). Heisler also discloses the apparatus having a shoulder bands 40 (best seen fig. 1) and a lap belt 45 attached to the platform 30 (fig. 1), except for a head restraining band. However, Schaeffer teaches a movable therapy table that includes various straps such as a head restraining band, a chest restraining strap and leg restraining strap in order to stabilize the patient to the therapy table during

use (fig. 1, col. 5, lines 34-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Heisler's apparatus, to include a head restraining band, as suggested and taught by Schaeffer, for the purpose of providing additional securing means in order to securely stabilize the head of the patient to the apparatus during use (fig. 1, col. 5, lines 34-36).

### ***Response to Arguments***

7. Applicant's arguments filed 6/25/07 have been fully considered but they are not persuasive.

8. Regarding to the objection to the new matter in claim 20 "for continuous rotation through 360 degrees", and "for imparting continuous 360 degrees rotation", the examiner maintains that there is no support in the specification to teach continuous 360 degrees of rotation. Applicant relies on the disclosure of the treatment as being "spinning, rolling and tumbling the body" and "tumbling or somersault type of head rotation" to infer continuous 360 degrees of rotation. While it is true that these motions of "spinning, rolling, tumbling or somersault" involve a certain degree of rotation, it does not necessary require that the rotation to be continuously 360 degrees. The platform can be rotated 90 degrees forwardly and backwardly to produce a spinning, rolling or tumbling action.

9. In response to applicant's argument that "In the last two sentences of paragraph 0017 there is further description of activity that must contemplate 360 degrees of rotation--"Depending on the direction of rotation imparted to the disks 4 the platform 2

may be spun forwardly or backwardly. The person manipulating the disks and enabling the rotation may control the rate of number of rotations." (emphasis added). There cannot be a device where the number of rotations may be controlled unless the rotations are full circles of 360 degrees", the examiner contends that number of rotations may refer to rotation of a certain degree and not necessary require the rotation to be 360 degrees.

10. In response to applicant's argument that Heisler fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the hand ring 17 does not move or rotate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

11. In response to applicant's argument that "The hand ring 17 of Heisler is a hand support ring--it is not and cannot function as an "actuator means operatively connected to the shaft for imparting rotation to the platform" because the hand ring 17 is fastened (by bolts, welding or rivets) to the legs 20 and 21 of the supporting frame", applicant's attention is directed to col. 4, lines 24-30, in which Heisler teaches that "by grasping the hand ring 17 and either pushing or pulling the operator can thus rotate to any desired position". Thus, the hand ring 17 is **operatively** connected to the shaft and serves as an actuator to impart rotation to the platform.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/

Quang D. Thanh, Primary Examiner  
Art Unit 3771, (571) 272-4982